Reg. No. GR/RNP/GOA/32 | 2003 YEAR OF THE CHILD | RNI No. GOAENG/2002/6410

Panaji, 18th September, 2003 (Bhadra 27, 1925) SERIES II No. 25

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT
No. 3

GOVERNMENT OF GOA

Department of Labour

—

Order

CL/Pub-Awards/98/640

The following Awards dated 28-1-1999 in Reference No. IT/9/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 3rd February, 1999.

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IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/9/96

Shri Anthony Gracias,
Rep. by the General Secretary,
Ramada Renaissance Resort,
Employees Union,
Varca, Fatrade-Goa. — Workmen/Party I

V/s

M/s. Goa Renaissance Resort
Varca, Fatrade-Goa. — Employer/Party II

Workman/Party I represented by Shri Subhash Naik
Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Dated: 28-1-1999.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Government of Goa by its order No. 28/67/95-LAB dated 19-1-1996 referred the following dispute for adjudication to this Tribunal.

1. "Whether the action of the management of M/s. Goa Renaissance Resort, Fatrade, Goa in terminating the services of Shri Anthony Gracias, Assistant Steward, w.e.f. 7-2-95 is legal and justified.

2. If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/9/96 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (For short "Workman") filed statement of claim which is at Exb.5. The facts of the case in brief as pleaded by the workman

are that he was appointed as a Trainee Assistant Steward by the Employer/Party II (For short "Employer") from 26-2-93 to 25-2-94. That, as per the appointment letter dated 25-2-93 issued to him, it was stated that the period of training was extendable. That, when this training period ended on 25-2-94, the employer did not extend the training period further and when this fact was brought to the notice of the employer, he was told that he would be put on probation and subsequently, he would be confirmed. That the employer allowed the workman to continue to work as a Training Assistant Steward for another year without regularising or confirming his services. That he worked with the employer continuously and without any break for two years on a monthly stipend of Rs. 550/-. That the employer terminated the services of the workman w.e.f. 7-2-95 in contravention of the service rules and the provisions of Goa, Daman and Diu Shops and Establishment Act and the rules made thereunder and also in violation of the provisions of natural justice. The workman contended that the employer terminated his services in violation of the provisions of Industrial Disputes Act, 1947 and the action of the employer is illegal and unjustified. The workman therefore, claimed that he is entitled to reinstatement in service with full back wages.

3. The Employer filed written statement which is at Exb.6. The employer stated that the reference is not maintainable and is bad in law. The employer stated that the workman had no lien over the employment and hence the dispute raised by him does not survive and therefore, the reference is liable to be rejected. The employer admitted that the workman was initially appointed as a Trainee and stated that the extension of the training period is the sole discretion of the employer which fact has been accepted by the workman and at no point of time any objections were raised by him. The employer stated that as per the extension letter issued to him, the services of the workman automatically came to an end after 6-2-95. The employer stated that the workman was given training on job and as per the appointment letter, as it was found that his training need not be extended further, his training period came to an end on 6-2-95. The Employer denied that the workman worked continuously for two years or for 630 days or that his work is of continuous nature. The employer denied that the services of the workman were terminated in violation of the service rules or in violation of the provisions of Shops and Establishment Act or in violation of the principles of natural justice of the Industrial Disputes Act, 1947. The employer stated that the workman is not entitled to any reliefs as claimed by him. The workman thereafter filed Rejoinder which is at Exb.7.

4. On the pleadings of the parties, issues were framed at Exb.8. and thereafter, the evidence of the workman was partly recorded. On 9-11-98, when the case was fixed for the evidence of the workman, the parties submitted that the dispute between them is being settled. Accordingly, on 30-11-98, when the case was fixed for hearing, Shri Subhash Naik appeared along with the workman and Adv. M. S. Bandodkar appeared on behalf of the employer and they submitted that the parties have arrived at an amicable settlement. They produced the terms of the settlement dated 30-11-98 and prayed that consent award be passed in terms of the settlement. I have gone through the terms of the settlement dated 30-11-98 Exb.15. The said terms are certainly in the interest of the workman. I therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 30-11-98 Exb.15.

ORDER

1. It is agreed that the Employer/Party II shall pay a sum of Rs. 27,000/- (Rupees twenty seven thousand only) in full and final settlement to the Workman/Party I arising out of his employment which shall include notice pay, leave salary, retrenchment compensation, gratuity if any and ex-gratia, etc.

2. The Workman/Party I shall accept the amount mentioned in clause No. 1 in full and final settlement of his all claims arising out of his employment and further confirms that he shall have no further claim against the Employer/Party II of whatsoever nature including any claim of reinstatement or re-employment and that his entire claim in the reference is fully satisfied.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

CL/Pub-Awards/98/1778

The following Award dated 3-7-1996 in Reference No. IT/39/90 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of

Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 26th March, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/39/90

Shri Vasudeo K. Raut, ... Workman/Party I
Fatorda, Margao-Goa.

V/s

M/s. Goa Transport Ltd., ... Employer Party II
Margao-Goa.

Workman-Party I represented by Shri S.V. Cuncolienkar.

Employer-Party II represented by Adv. P. J. Kamat.

Panaji, Dated 3-7-1996.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order bearing No. 28/37/90-LAB dated 22-8-90 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Goa Transport Limited, Margao, in dismissing from services Shri Vasudeo K. Raut, Conductor, with effect from 30-8-1988 is legal and justified.

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/39/90 and registered A/D notices were issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (for short, 'Workman') filed a statement of claim at Exb. 2. The facts of the case in brief as pleaded by the workman are that he was employed with the Party II (for short, 'Employer') in the year, 1971 as a Conductor and he was drawing salary of Rs. 867/- per month. That by letter dated 8-6-88 the employer suspended the workman and thereafter he was chargesheeted on 10-8-88. That the employer did not conduct any enquiry into the charges levelled against the workman nor he was paid any subsistance allowance. That the charges levelled against the workman were that of grave misconduct and subsequently the employer terminated the services of the workman by letter dated 30-8-88 without holding any enquiry. The workman contended that on earlier occasion, i. e on 2-2-88, the employer had made allegation of theft and misappropriation against the workman and the employer had also filed police complaint against him in that respect, which complaint was subsequently dismissed by the Police Inspector at Margao Police Station. The workman further contended that his suspension, issuing of chargesheet to him and subsequently termination of his services by the employer was by way of victimisation. The contention of the workman therefore is that termination of his services by the employer is illegal and void and hence he is liable to be reinstated with full back wages and continuity in service.

3. The employer filed a written statement at Exb. 5. The employer stated that the workman was employed as a Conductor w.e.f., 23-2-1971. The employer stated that during the period of service, the workman had worked as a conductor on various routes and it was found that he was not honest and deligent in his duties. The employer further stated that it was also found that the workman was not giving the correct report as regards the cash collected by him and that on many occasions the funds workman had misappropriated the funds of the employer for which he was issued several Memos, show cause notices and chargesheets, which proved to be futile. The employer stated that in the year 1988, the Board of Directors changed and when the new Chairman Shri D. R. Savordenkar verified the past records, various incidents involving the workman came to light which had resulted into loss to the employer and therefore a chargesheet was issued to the workman in respect of the misappropriation of the employer's funds. That a police complaint was lodged against the workman which was closed by the police as a consequence of the influence brought upon them by the workman. The employer stated that since the workman had committed the misconduct of mis-appropriating the employer's funds, the employer lost confidence in the workman and therefore his services were terminated by letter dated 30-8-88 and the workman was asked to collect his legal dues from the office which was not done by the workman. The employer admitted that no enquiry was held into the chargesheet issued to the workman but denied that no subsistance allowance was paid to him or that any false allegations was made against him. The employer

contended that the order passed by the employer terminating the services of the workman was legal, just and proper and the claim of the workman was liable to be dismissed. The workman thereafter filled rejoinder at Exb. 6 controverting the pleadings made by the employer in the written statement.

4. On the pleadings of the parties, following issues were framed at Exb. 7.

1. Does Party No. I prove that the order of dismissal passed against him by Party II, is not legal and justified?

2. Does Party II, prove that Party I, was guilty of serious misconduct and he was dismissed from service?

3. Whether Party I is entitled to any relief?

4. What award or order?

My findings on the issues are as under:

(1) In the negative.

(2) In the affirmative.

(3) In the negative.

(4) As per order below.

REASONS

5. *Issues No. 1 & 2.* : Both these issues are taken up together as they are connected with each other. It is the contention of the workman that the order dated 30-8-88 passed by the employer terminating his services is not legal and justified. Shri S. V. Cuncolienkar, representing the workman submitted that a chargesheet dated 10-8-88 was issued to the workman by the employer which contained serious charges of misconduct. He submitted that the charges levelled against the workman were that he had mis-appropriated the funds of the employer and therefore before terminating the services of the workman a domestic enquiry ought to have been held against him. The contention of Shri Cuncolienkar is that it is a well settled law that when a serious misconduct of misappropriation is alleged against a workman, the employer cannot terminate his services without holding proper enquiry and if it is done it amount to violation of fundamental rights and the order is illegal and void. Adv. P. J. Kamat, representing the employer on the other hand contended that the services of the workman were terminated because the employer had lost confidence in the workman because he had committed serious acts of misconduct including that of misappropriation of funds of the employer which could be established from documentary evidence. He contended that when the services of the workman were terminated for loss of confidence in him, it was not necessary to hold any enquiry prior to the order of termination and the employer could prove the misconduct against the workman for the first time before the Tribunal. He relied upon the decision of the Supreme Court in the case of K. K. Lakshman v/s Management of Pan Am Airways reported in 1984-87 SCLJ 608 in support of his above contention.

It is an admitted fact that the services of the workman were terminated by the employer without holding any enquiry. It is also an admitted fact that a charge sheet dated 10-8-88 Exb. 20 was issued to the workman wherein the charges of mis-appropriating the funds of the employer and falsifying the documents were leveled against him. Now, the question is whether the action of the employer in terminating the services of the workman without holding any enquiry into the charges is illegal and void as contended by the workman. Shri Cuncolienkar representing the workman has not relied upon any decisions in support of his contention that the termination is illegal for above reasons. Adv. P. J. Kamat on the other hand has relied upon the decision of the Supreme Court in K. K. Lakshman (Supra) in support of his contention that holding of such an enquiry is not necessary prior to termination of services. I have gone through the said decisions of the Supreme Court. The Supreme Court in para. 4 of its Judgement has held that the action of termination of services of a Government servant grounded upon stigma would be bad if no disciplinary enquiry is held preceeding the order of termination but in the case of a workman the order of termination could be justified even in the course of adjudication before the appropriate tribunal under the Industrial Disputes Act, though no enquiry had been undertaken earlier. The same law has been laid down by the Supreme Court in the case of Workmen of the Motipur Sugar Factory Pvt. Ltd., v/s The Motipur Sugar Factory Pvt. Ltd., reported in Air 1965 SC 1803. In the said case the Supreme Court in paras 11 and 12 of its judgement has held that if an employer fails to make an enquiry before dismissing or discharging a workman, it is open to him to justify his action before the Tribunal by leading all the relevant evidence before it and the entire matter would be open before the tribunal. The Supreme Court further held that if the dismissal is set aside by the Industrial Tribunal only on the ground that the employer has dismissed his employee without holding an enquiry it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again

and in this event another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. It is therefore a settled law that if the employer wants to terminate the services of a workman on the ground of misconduct it is not necessary that the employer has to hold a domestic enquiry prior to the termination order. The employer can proceed to terminate the services without holding enquiry and justify his action before the Tribunal by leading evidence, which infact has been done by the employer in the present case. Therefore, the contention of the workman that the order of termination of his services is illegal and void for not holding domestic enquiry prior to the order of termination, has no substance. In the circumstances, the order cannot be held as illegal and void on this count.

Now, the next question for consideration is whether the employer has proved by sufficient evidence that the workman was guilty of serious acts of misconducts and hence the employer was justified in terminating the services of the workman. Shri Cuncolienkar, representing the employer submitted that the first charge against the workman is that on 20-1-86 an amount of Rs. 4500/- was handed over to the workman for paying the same to the Director of Accounts, in respect of the fines pertaining to Bus No. GDT-2162 and that the workman produced the challan dated 23-1-86 to show that the said amount was paid in State Bank of India, Panaji, which challan according to the employer was forged, as infact, according to the employer, the workman had not paid Rs. 4500/- in State Bank of India, but paid only Rs. 1944/- and thus mis-appropriated the amount of Rs. 2556. Shri Cuncolienkar submitted that though the workman had admitted that he had obtained Rs. 4500/- from the employer for paying the fines relating to Bus No. GDT 2162, the workman has deposed that the said amount was handed over by him to one Mr. Damodar Naik, and he has produced the receipt issued by said Damodar Naik to this effect. He further submitted that the employer had lodged a complaint to the Margao Police against the workman in respect of the above charge, however the Police closed the case as after the investigation it was found that there was no substance in the complaint made by the employer. Shri Cuncolienkar relied upon the certificate Exb. 21 issued by the Police in this respect. He also referred to the Minutes of the Meeting Exb. 33 held by the Board of Directors and submitted in the said meeting the Board had decided to close the matter. Shri Cuncolienkar contended that there is no evidence on record to prove that the challan was forged by the workman. He submitted that the records were in possession of the employer and hence it is possible that any other person might have committed the forgery. Shri Cuncolienkar further contended that the entire incident alleged against the workman is based on suspicion and surmises and conjectures which according to him is illegal. In this respect he relied upon the decision of Hindustan Paper Corporation and others v/s Mahindra K. Gosh, reported in 1991(63) FLR 151. He also submitted that the charge was issued to the workman is vague in the sense that the charge is made without any cogent evidence that the workman had made forgery on challan and therefore the services of the workman could not have been terminated. In this respect, he relied upon the decision of the Supreme Court in the case of transport Commissioner, Madras v/s A. R. K. Moorthy reported in 1995 I CLR 377. As regards the other charge that the workman had misappropriated the amount of Rs. 150/- given to him for payment of the telephone bill of the Belgaum office of the company, Shri Cuncolienkar submitted that the said amount of Rs. 150/- was handed over by the workman to the Driver Mr. Ibrahim Rastogi who was residing at Belgaum for payment of the same to the Telecom Department and the workman was under the impression that said Mr. Rastogi had made the payment and rendered the account to the employer. He therefore submitted that for the above reasons the workman cannot be held guilty if the said amount was not paid by Mr. I. Rastogi. As regards the other charges mentioned in the chargesheet, Shri Cuncolienkar submitted that the charges are not specific and no enquiry was held by the employer in respect of the said charges. Shri Cuncolienkar submitted that since the charges levelled against the workman were not prove against the workman, the termination of the services of the workman was not proper and justified and hence the workman was liable to be reinstated with continuity in service.

Adv. P. J. Kamat, learned counsel appearing for the employer on the other hand submitted that the employer has adduced sufficient evidence to justify the action in terminating the services of the workman. He submitted that as regards the contention of the employer that the workman had misappropriated the amount of Rs. 2556/- the workman himself has admitted in his deposition that he had received the amount of Rs. 4500/- from the employer for the purpose of paying the fines of the R. T. O., and in his cross examination he has admitted the signing of the voucher Exb. 27 in token of receipt of the said amount. He submitted that the workman in his examination in chief has stated that he had given the said amount to one Mr. Damodar Naik who issued the receipt to him, whereas in cross examination he stated that he did not accept the cash of Rs. 4500/- and that the cashier actually paid the said amount to the agent Shr Damodar Naik. Adv Kamat submitted that the workman has made the above contradictory statements which are material. He further submitted that from the evidence, it is clear that the

workman paid the amount of Rs. 1944/- towards fine and tampered with the challan which he produce before the employer to show that an amount of Rs. 4500/- was paid in the Bank. He also submitted that the workman did not examine Mr. Damodar Naik as his witness to prove that the amount of Rs. 4500/- was handed over to him by the workman and also to prove the receipt which was marked 'A' for identification. He pointed out that even otherwise the receipt purported to have been issued by Shri Damodar Naik is of no value because it is dated 20-1-85 whereas the amount was received on 20-1-86. As regards the contention of the employer that Rs. 150/- was given to the workman for payment of telephone bill of its Belgaum office to be paid at Belgaum and that the workman did not pay the said amount but misappropriated the same, Adv. Kamat submitted that the workman in his deposition has admitted the receipt of the said amount but took a defence that he had given the said amount to the driver Mr. Ibrahim Rastogi to make the said payment and that he was under the impression that said Mr. Rastogi had made the said payment. Adv. Kamat submitted that to prove his defence, the workman did not examine Mr. Rastogi and since the workman had admitted the receipt of the amount of Rs. 150/- it was for him to account for the same, and he has failed to do so. As regards the outstanding dues, Adv. Kamat submitted that the workman in his deposition has admitted that when his services were terminated an amount of Rs. 1773.06p. was outstanding against him from the advances which he used to obtain for his personal use and which was being deducted from his monthly pay. Adv. Kamat also submitted that Shri Savordenker, the Chairman who has examined himself on behalf of the employer has produced the past records of the workman such as Memos, notices, chargesheets at Exb. 32(colly) which were issued to the workman and that all these records show that the past record of the workman was not good. He therefore contended that the evidence on record fully justify the action of the employer in terminating the services of the workman on the ground of loss of confidence.

I have gone through the entire records and also I have given due consideration to the submissions made by both the parties. The employer has terminated the services of the workman on the ground of loss of confidence because the workman was involved in the acts of mis-appropriating the funds of the employer, forging of the challan, not returning the balance of the amount obtained as advances and also because his past conduct was not good. I have already held that though no enquiry was held by the employer in respect of the chargesheet issued to the workman, if the services are terminated by the employer for loss of confidence in the workman, the employer is entitled to lead evidence before the Tribunal to justify its action of termination. Therefore, it is necessary to find out whether such evidence has been led by the employer in the present case. In this case, the workman has examined only himself and the employer also has examined only its Chairman. The first charge against the workman is that on 20-1-86 the employer gave to the workman an amount of Rs. 4500/- to be paid to the Director of Transport towards the fines inrespect of the Bus No. GDT 2162 and the workman paid the amount of Rs. 1944 in the State Bank of India and retained the amount of Rs. 2556/- with himself thereby misappropriating the same. The employer's further contention is that the workman forged the challan issued by the State Bank of India by tempering with the amount mentioned in figures and words in the said challan dated 23-1-86, to show that he had infact paid the amount of Rs. 4500/- in the State Bank of India. The workman in his examination in chief has admitted that he had obtained the amount of Rs. 4500/- from the employer for payment of fine to R. T. O. In the cross examination of the workman the employer has produced a voucher dated 20-1-86 Exb. 27 for Rs. 4500/- and the workman has admitted his signature on the said voucher which is in acknowledgment of the receipt of the said amount. The workman in his deposition has taken contradictory stand. In his examination in chief he admitted the obtaining of the amount Rs. 4500/- and further stated that he handed over the said amount to one Mr. Damodar Naik for payment of fines whereas in his cross examination he stated that the cashier actually paid the amount to the agent Mr. Damodar Naik and not to him and that he signed the voucher because the amount was shown in his name. This is a very material contradiction. It clearly shows that the workman is totally inconsistent in his defence. The documentary evidence namely the voucher dated 20-1-86 Exb. 27 and the statement made by the workman in his examination in chief proves the contention of the employer that the amount of Rs. 4500/- was given to the workman for payment of fine to R.T.O. If it is the case of the workman that he has handed over the said amount to Mr. Damodar Naik or that the said amount was infact paid to Mr. Damodar Naik by the Cashier and that he signed the voucher because his name was mentioned in the same, the workman ought to have examined Mr. Damodar Naik as his witness as this was very material. However, the workman did not do so but produced the receipt purported to have been signed by said Mr. Damodar Naik in acknowledgment of the receipt of the amount of Rs. 4500/-. This receipt cannot be taken into account for two reasons. Firstly because this receipt was marked 'A' for identification which means that the said receipt ought to have been proved by the workman through

Mr. Damodar Naik by examining him as a witness, and secondly because admittedly the incident of giving the amount of Rs. 4500/- had taken place on 20-1-86 whereas the receipt marked 'A' for identification is dated 22-1-85 which means that the receipt is predated. Besides, the said receipt also does not state that the said amount is received by Shri Damodar Naik from the workman. Therefore, it is proved beyond doubt that the amount of Rs. 4500/- was given to the workman and not to Shri Damodar Naik for payment of fines of R.T.O. Now, the question is whether the employer has succeeded in proving that the workman misappropriated the amount of Rs. 2556/- from the said amount of Rs. 4500/-. It is the contention of the employer that the challan dated 23-1-86 Exb. 28 was submitted by the workman to the employer to show that the amount of Rs. 4500/- was paid by him in the S.B.I., towards the payment of fine of R.T.O. The employer has produced the minutes of the meeting dated 28-1-86 Exb. 33 through its Chairman Shri D. Sanvordekar. In the said minutes there is a reference to the challan dated 23-1-86 and the over writing of the amount in words and figures in the said challan. Shri Sanvordekar has stated in his deposition that he become the Chairman in the year, 1987 and when he was verifying the accounts of the employer he came across the challan dated 23-1-86 Exb. 28 and he suspected that the amount of Rs. 4500/- was overwritten and when he went to the Director of Accounts to verify he found that the amount of Rs. 1944/- was paid and not Rs. 4500/-. He has produced the letter dated 23-2-88 from the Director of Accounts along with the photostate copy of the challan dated 23-1-86 bearing No. P/1847, Exb. 31 (colly). The challan submitted to the employer and the photostate copy of the challan are both dated 23-1-86 and also they bear the same number. The photostate copy of the challan Exb. 31 (colly) forwarded by the Director of Accounts from his records is the genuine challan and it shows that Rs. 1944/- was paid in the S.B.I., and not Rs. 4500/-. There are no overwritings on the amount in words and figures in the said photostate copy of the challan Exb. 31 (colly) whereas the challan Exb. 28 shows that there are over writings on the amount in words and figures which means that the said challan is tempered and forged. In the entire evidence the workman has not disputed or denied that there are no overwritings on the amount in words and figures in the challan Exb. 28. Since it has been proved by sufficient evidence that the amount of Rs. 4500/- was given to the workman for payment of fines to R.T.O., and the photo copy of the challan Exb.31 (colly) shows that only Rs. 1944/- was paid, the only inference which can be drawn is that the said challan Exb. 28 has forged by the workman to mislead the employer that he had paid the amount Rs. 4500/- in the S.B.I. when infact he paid only Rs. 1944/- The said challan Exb.28 also bears the signature of the workman. The balance amount of Rs. 2556/- has not been returned by the workman to the employer nor he has accounted for it. Therefor, it is proved beyond doubt that the said amount has been misappropriated by the workman for his personal use. The contention of the workman is that the employer had lodged a complaint with the Margao Police in respect of the same charge that the workman had misappropriated the amount of Rs. 2556/- and forged the challan and that the Margao Police had closed the complaint for want of evidence. The workman has produced a certificate dated 1-2-90 Exb. 21 issued by the Police Inspector, Margao, in this respect. Shri Cuncolienkar representing the workman has stated that when a Criminal Court acquits a person, due weightage is to be given to the findings of the Criminal Court. In the respect he has relied upon the decision of the Bombay High Court in the case of Jaywant Bhaskar Sawant v/s Board of Trustees of Port of Bombay and others reported in 1995 (70) FLR 368. I have gone through the said decision of the Bombay High Court and I find that this authority is totally in applicable to the facts of the present case. In the said case the Bombay High Court has held that if a charged person is honourably acquitted by a Criminal Court, the disciplinary authority should give due weightage to the findings recorded at the criminal trial and ordinarilly it would not be expedient to continue the departmental enquiry and the charged officer is honourably acquitted at the trial and is not acquitted merely because of benefit of doubt or some technical reason. The Bombay High Court has further held that even in such a case it is within the discretion of the management to hold the domestic enquiry for a case, however, the management must exercise the discretion fairly and reasonable and not arbitrarilly or capriciously. Therefore it follows that if this authority of the Bombay High Court is to be made applicable, there should be two basic requirements, namely (1) that the acquittal should be a honourable acquittal by a Criminal Court and (2) that there should be a departmental enquiry pending. In the present case both the above requirements are missing. There is neither acquittal order from the Criminal Court nor there is any departmental enquiry pending. In view of this the above authority of the Bombay High Court is totally inapplicable to the facts of the case. In the present case, as per the certificate Exb. 21, it is issued by the Police Inspector, Margao, stating that the complaint was closed because of want of evidence at the time of investigation. It is not an acquittal order from the Criminal Court. It is not known what investigations were carried by the Police. The workman in his cross examination has admitted that his brother is serving in the Police Department. It is possible that the complaint was closed by the Police on the account of influence brought upon by the said brother of the workman as suggested by the

employer in the cross examination of the workman. Adv. Kamat has relied upon the decision of the Supreme Court in the case of Bharat Cooking Coal Co., v/s B.K. Singh and others reported in 1994 2 CLR 1083 wherein it has been held by the Supreme Court that the report of discharge of criminary proceedings need not be considered by the Tribunal. In view of what is discussed above, I hold that the employer has succeeded in proving the charge of misappropriation of the amount of Rs. 2556/- and the forging of the challan against the workman. The second charge that is levelled against the workman is that he misappropriated the amount of Rs. 150/- given to him on 26-12-87 to pay the telephone bill of the Belgaum office of the employer at Belgaum. The workman has admitted in his examination in chief itself that he had received the amount of Rs. 150 for payment of the telephone bill of the Belgaum office. At that time the workman was working as a Conductor on Margao-Vasco-da-Gama-Belgaum route. The workman however took the defence that he handed over the said amount to the driver Mr. I. Rostogi who according to him was the agent of the employer at Belgaum. The workman has not produced any oral and documentary evidences in support of his defence that he handed over the said amount to Mr. Rastogi. He did not examine said Mr. Rastogi nor produced any receipt from him in support of his said defence. Also there is no evidence from the workman that the telephone bill of Rs. 150 was actually paid. Once the workman admitted that he had received the amount of Rs. 150 for the payment of the telephone bill it was for him to account for the same and he has failed to do so. This being the case, it is established that the workman misappropriated the amount of Rs. 150 which was given to him for the payment of telephone bill of Belgaum office. As regards the contention of the employer that the workman has not returned the amount of Rs. 1773.06p. from the advances taken by him, the workman in his cross examination has admitted that at the time when his services were terminated an amount of Rs. 1773.06p. was outstanding against him. In his examination in chief he admitted that he used to take advances for his personal use. Shri Cuncolienkar appearing for the workman has contended that the chargesheet given to the workman is vague and therefore his services could not have been terminated on the charges levelled against him in the said charge sheet. He has relied upon the decision of Supreme Court in the case of A.R.K. Moorthy(supra). I have gone through the said charge sheet which is produced at Exb. 20. The charges levelled against the workman in the said chargesheet are specific and all the necessary particulars as required are present in respect of each charge. Therefore, the contention of Shri Cuncolienkar that the charge sheet is vague is without any substance. Besides, the workman never pleaded as regard the vagueness of the charges in his statement of claim or in his rejoinder and therefore the workman cannot be allowed to make a grievance about the vagueness of charges at the stage of arguments. Shri Cuncolienkar has also submitted that the charges levelled against the workman are based on suspicion, surmises and conjuctures and not on any cogent evidence and hence punishment of termination of services could not have been awarded to the workman. In this respect he has relied upon the decision of the Calcutta High Court in the case of Hindustan Paper Corporation(supra). I do not agree with this contention of Shri Cuncolienkar. The employer has led sufficient evidence before this Tribunal in support of the charges levelled against the workman and I have discussed the evidence at length while giving my findings on the said charges. The employer has led evidence on the past conduct of the workman. Shri Durganand Sanvordekar, the Chairman of the employer has produced letters/ /notices Exb. 32(colly) in the course of his cross examination, which were issued to the workman. The workman has admitted the receipt of the letters dated 18-7-73, 13-7-74, 22-6-74, 19-10-74, 25-8-75, 22-3-79, 14-12- 82 & 22-9-83 of Exb. 32(colly). I have gone through the said letters. The allegations made in the said letters against the workman are to the effect that when the bus was checked, passengers were found travelling without tickets, cash was found short, luggage slips were not issued, collected fares from the passengers but did not issue tickets, retained the cash with himself in respect of the fares collected, carried illicit liquor to Belgaum and was arrested by the Belgaum Police, absented from duties for one month, did not submit report as regards fares collected. In the cross examination of Shri Sanvordekar, the witness for the employer, no suggestions whatsoever has been put to the said witness that the allegations made in the said letters are false, nor replies or explanations if given at all to the said letters by the workman has been brought on record by the workman. The allegations made against the workman in the above said letters, the receipt of which are admitted by the workman, are of serious nature viz-a-viz the nature of duties of the workman who was a conductor. The said letters show that the past conduct of the workman was not good and he was not deligent in discharging his duties. I am of the view that the punishment of dismissal is not disproportionate as the charge which stands proved is of misappropriation. I, therefore do not find any reason to interfere with the order of termination of service. Therefore considering the charges levelled against the workman which has been proved before this Tribunal and the past records of the workman, I am of the view that the employer was justified in terminating the services of the workman w.e.f. 30-8-88 on the ground of

loss of confidence I, therefore, hold that the workman has failed to prove that the order of his dismissal is not legal and justified. I, further hold that the employer has succeeded in proving that the workman was guilty of misconducts and hence he was dismissed from service. In the circumstances, I answer the issue No. 1 in the negative and the issue No. 2 in the affirmative.

6. *Issue No. 3* : The workman had contended that the employer terminated his services illegally and without justification and hence he was entitled to reinstatement with full back wages with continuity in service. While deciding the issue Nos. 1 & 2, I have held that the termination of services of the workman by the employer is legal and justified. In the circumstances the workman is not entitled to the reliefs claimed by him. However, the contention of Shri Cuncolienkar who is representing the workman is that if this Tribunal holds that the order of termination passed by the employer is legal and justified, the said order will not relate back to the date of the order passed by the employer, but it will be effective from the date of the award of the Tribunal since no domestic enquiry was held by the employer before passing of the order of termination and therefore the workman is entitled to the wages for the intervening period i.e. for the period between the date of the dismissal and the date of the award of the Tribunal. In support of his above contention he has relied upon (1) the decision of the Supreme Court in the case of Desh Raj Gupta v/s Industrial Tribunal IV, U.P., Lucknow and Anr., reported in 1991 I CLR page 332; (2) the decision of the Bombay High Court in the case of Ahmedmiya Ahmedji v/s The Indian Hume Pipe Company Ltd. & Ors reported in 1994 II CLR page 206 and (3) the decision of the Rajasthan High Court in the case of The Divisional Mechanical Engg., R.S.R.T.C. Jodhpur v/s Jaiprakash and Anr., reported in 1994 LLR 134. Adv. Kamat on the other hand has relied upon (1) the decision of the Supreme Court in the case of P. H. Kalyanin v/s Air France, Calcutta reported in AIR 1963 S.C. 1756 and D. C. Roy v/s Presiding Officer, reported in 1976 LIC 1142 in support of his contention that when there is no enquiry the employer can adduce the evidence before the Tribunal and if the Tribunal comes to the conclusion that the misconducts are proved and punishment is proper, it will relate back to the date of the dismissal. Adv. Kamat has also submitted that the Bombay High Court in the case of Basu Deba Das v/s M. R. Bhope reported in 1993, II LIC 1977 has held that in case of no enquiry or facade of enquiry, the Tribunal has to see the nature of misconducts committed by the workman and if the misconducts are of grave and serious nature the relation back theory would apply. He has submitted that the misconducts which are proved against the workman are of grave and serious nature and hence the principal laid down by the Bombay High Court in the case of Basu Deba Das would apply and consequently the workman is not entitled to any wages for the intervening period as claimed by him. In the present case it is an admitted fact that no domestic enquiry was held by the employer before passing of the order of termination of the services of the workman. I have gone through the decisions relied upon by both the parties. Infact all these decisions came to be considered at length by his Lordship Justice Shrikrishna of the Bombay High Court in the case of Shankar Amrita Deshmukh v/s Paper and Pulp Conversions Ltd. and others reported in 1995 (71) FLR 859. In the said case his Lordship J. Shrikrishna has held as follows:

Article 141 of the Constitution of India, provides "The Law declared by the Supreme Court shall be binding on all courts within the territory of India." The constitutional provision clearly indicates that what is binding is the law declared. I have already indicated as to why I am unable to agree with the contention of the learned Advocate that the three judgments of the Supreme Court referred to in D.C. Roy, Gujarat Steel Tubes and Desh Raj Gupta have laid down the proposition of law as canvassed. I do not agree that these judgments have declared any law on the subject within the meaning of Article 141 of the Constitution to make it binding. In these circumstances, I am unable to accept the contention so vehemently and persistently canvassed at the bar by Mr. Pradhan. I am also, respectfully, unable to subscribe to the opinion expressed by the learned Single Judges of this Court in Ahmedmiya Ahmedji's case and Bharat Petroleum Corporation Ltd's case. I would respectfully prefer to follow the reasoning in Rambhau's case and hold that, even in a case of no enquiry, the doctrine of 'relation-back' applies. In my view, there is neither statue, nor precedent, to the contrary. The ominous note sounded by the Supreme Court in paragraph 13 of the judgment in D.C. Roy's case (supra) has not been translated into a proposition of law laid down in the Judgments cited at the bar. The law remained as evolved in Kalyani."

Therefore the law laid down by the Bombay High Court in the case of Shankar Amrita Deshmukh (supra) is that even when no domestic enquiry is held, if the order of dismissal is justified before the Tribunal on the basis of evidence led before it, the order of the Tribunal would relate back to the date on which the order of dismissal was passed. In view of this decision of the Bombay High Court the contention of the workman that he is entitled to the wages for the intervening period i.e. between the date of the dismissal order passed by the employer and the award passed by this Tribunal, has no merit and hence the same is rejected. I, therefore,

hold that the workman is not entitled to any relief and hence I answer the issue No. 3 in the negative.

In the circumstance, I pass the following order.

ORDER

It is hereby held that the action of the management of the employer M/s. Goa Transport Limited, Margao, Goa in dismissing from services the workman Shri Vasudeo K. Raut, Conductor, with effect from 30-8-1988 is legal and justified. It is further held that the workman Shri Vasudeo K. Raut is not entitled to any relief.

There shall be no order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

CL/Pub-Awards/98/1851

The following Award dated 19-2-1999 in Reference No. IT/39/95 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 30th March, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/39/95

Shri Isidoria P. Vaz,
115, Tonem, Arossim,
Cansaulim-Goa. — Workman/Party I

V/s

The Regency Travelodge Resort
Utorda, P. O. Majorda,
Salcete-Goa. — Employer/Party II

Workman/Party I represented by Adv. Shri D. P. Bhise
Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Dated: 19-2-99.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act 1947 (Central Act 14 of 1947) the Government of Goa by its order No. 28/34/95-LAB dated 16-8-1995 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of The Regency Travelodge Resort, Hospitality Resorts Ltd., Utorda, in dismissing Shri Isidoria P. Vaz, Trainee Assistant Steward, w.e.f. 15-4-95 is legal and justified.

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/39/95 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short "Workman") filed the statement of claim at Exb.5. The facts of the case in brief as pleaded by the workman are that he was initially appointed as a trainee Assistant Steward by the Employer/Party II (for short "Employer") vide letter dated 24-10-93 and thereafter by order dated 8-5-94 he was appointed regularly on probation and as on the date of termination of this service he had completed one year and 22 days of regular service. That on 13-12-94 the employer issued a chargesheet to him and subsequently a domestic enquiry was conducted into the said chargesheet. That the Inquiry Officer submitted his report holding that the charges are proved against him. The workman contented that the findings given by the Inquiry Officer are perverse. The workman contented that there was no evidence in the enquiry to prove the charges levelled against him. The Workman therefore claimed that termination of his services is illegal and unjustified and hence he is entitled to be reinstated in service with full back wages.

3. The employer filed written statement at Exb.6. The employee stated that the reference is not maintainable because it is incompetent, illegal, invalid and ultra-vires. The employer admitted that workman was appointed as Trainee Assistant Steward by letter dated 24-10-93. The employer stated that his training period cannot be reckoned with his period of service because he has no lien over the employment during the training period and the period of service can be reckoned only from the date from which he was taken on probation. The employer

denied that workman had completed one year and 22 days of regular service. The Employer stated that during the probation period the workman comitted a serious act of misconduct and therefore he was issued a charge sheet dated 13-12-94. The employer denied that the findings of Inquiry Officer are perverse. The employer denied that the charges levelled against the workman are not proved in the enquiry. The employer denied that termination of service of the workman is illegal or unjustified or that workman is entitled to reinstatement in service with full back wages or to any other relief. The workman thereafter filed rejoinder at Exb.7.

4. On the pleading of the parties issues were framed at Exb-8 and thereafter the case was fixed for evidence of workman on preliminary issues. On 13-1-99 the workman appeared in person alongwith Adv. Shri M. S. Bandodkar, who represented the employer and they submitted that the dispute between the workman and employer was duly settled. They filed the terms of settlement dated 13-1-99 at Exb.11 and prayed that award be passed in terms of the settlement. I have gone through the terms of settlement dated 13-1-99 and I am satisfied that the said terms are certainly in the interest of workman. I therefore accept the submission made by the parties and pass the consent award in terms of the settlement dated 13-1-99 Exb-11.

ORDER

1. It is agreed by the Party No. II that the Party No. I workman, Shri Isidorio P. Vaz shall be paid a sum of Rs. 30,000/- (Rupees thirty thousand only) in full and final settlement of all claims arising out of this Reference and this amount shall include gratuity, notice pay, leave salary and ex-gratia and bonus etc.

2. Mr. Isidorio P. Vaz shall accept the amount mentioned in clause 1 as full and final settlement of all his claims arising out of this Reference and employment with the Party II and further confirm that he shall have no further claim of whatsoever nature against the Party II/Company.

3. The Party II has today paid the amount mentioned in clause 1 by cheque bearing No. 211647 dated 12-1-99 drawn on IndusInd Bank Ltd., Margao Goa.

4. It is respectfully prayed that consent Award be passed in terms of the above settlement.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Labour Court.

Order

No. CL/Pub-Awards/98/2160

The following Award dated 1-4-1999 in Reference No. IT/3/88 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 20th April, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/3/88

Shri Jairam Malwankar,
Kadamba Transport Corporation
Workers' Union,
Panaji-Goa. — Workman/Party I

V/s

M/s. Kadamba Transport
Corporation Ltd.,
Panaji-Goa. — Employer/Party II

Workman/Party I represented by Adv. A. Nigalye.
Employer/Party II represented by Adv. P. J. Kamat.

Panaji, Dated: 1-4-1999.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 13th January, 1988 bearing No. 28/37/86-ILD referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Kadamba Transport Corporation Limited, Panaji, in terminating the services of Shri Jairam Malvankar,

Conductor represented by Kadamba Transport Corporation Workers' Union, with effect from 16-2-1986 is legal and justified.

If not, to what relief the workman are entitled?"

2. On receipt of the reference, a case was registered under No. IT/3/88 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short "Workman") filed his statement of claim at Exb.2. The facts of the case in brief as pleaded by the workman are that the employer-Party II (for short, "Employer") is a company incorporated under the provisions of Companies Act, 1956 having its registered office at Panaji, Goa. That the employer is engaged in the business of passenger transport i.e. transport of passengers through stage carriages for hire, and for this purpose the employer owns a fleet of over 200 buses through which it carries on the business activities. That the employer has several establishments and depots which are industrial establishment within the meaning of sec.2(Ka) of the Industrial Disputes Act, 1947. That the employer has more than 1000 employees in its employment who below to different categories such as drivers, conductors, mechanics, clerical staff etc., and the workman was one of such employees employed in the estb. of the employer as a conductor. That the workman served the employer faithfully and to the best of his ability during the tenure of his service and his past record is clean and unblemished. That in or around June, 1983 the workers of the employer formed a trade union called "Kadamba Transport Corporation Workers' Union" and the workman was the member of the said union from the date of its formation but he did not take any active part in the affairs of the said union. That on or about 4th November, 1983, the union served a charter of demands on the employer demanding revision of wages and other demands and since the employer failed to consider the said demands of the union the dispute was raised before the Labour Commissioner who initiated conciliation proceeding. That since the employer was interested in delaying the conciliation proceedings, the union was compelled to serve a notice of strike on the employer and the Commissioner, Labour and Employment, on 31st March and 1st April, 1994 intimating that the union propose to call on strike on any day after 14th April, 1984. That the workman did not go on strike either on 15-4-84 or on any date thereafter. That however on or about 25-4-84 the workman received a letter dated nil signed by the Depot Manager stating that he had participated in an illegal strike w.e.f. 15th April, 1984 and that he indulged in various types of violance and that pending the issuing of charge sheet he was suspended in terms of clause 28 (c)(III) of the Certified Standing Orders of the Corporation. That thereafter the workman received a chargesheet dated 8-6-84 signed by the General Manager, Traffic a Administration, making false and baseless allegations against him and further stated that the alleged acts amounted to misconducts under clauses (xiv), (xxiii), (xxiv), (xxxxiv), xxxxvii and (Lii) of the Certified Standing Orders of the employer. That it was alleged in the said chargesheet that in furtherence of the illegal strike the workman along with other workers had obstructed the bus GDX 126 which was being taken out of the Porvorim Depot and that he along with other workers threatened the workers who wanted to go on duty and who did not want to participate in the strike and that he along with the other workers forced the union operating staff to stop the buses at the Mandovi bridge on 15th April, 1994 and forced them under duress and threatened them to take buses to Porvorim depot instead of Panaji bus stand. That an enquiry was held into the charges which enquiry was illegal and was held in violation of the principles of natural justice as also the Inquiry Officer was bias in favour of the employer and against the workman. That the workman had replied to the suspension letter stating that he was not present at the place of the alleged incident on 15th April, 1984, 16th April, 1984 or any other day and that on 15-4-84 he had handed over the cash to his superior as per his instructions and had gone home to his village Naroa and he did not report for duty on 16-4-84 as it was his weekly off. That in the enquiry the workman was not given proper opportunity to defend himself and the officers of the employer colluded in conducting the enquiry and brought evidence on record which was favourable to the employer. That the Certified Standing Orders of the employer based on which the chargesheet was issued to the workman were not in force on the dates of the alleged incidents and the said Certified Standing Orders had come into force after 18-4-84. That therefore no misconduct could be imputed against the workman in terms of the said Standing Orders and the chargesheet based on the inoperative standing orders is a nullity. That the Inquiry Officer submitted his findings on 4-1-86 holding the workman guilty of all the charges levelled against him. That the workman received a show cause notice dated 4-1-86 signed by the General Manager, Traffic & Admn., stating that the employer had come to a conclusion that the workman should be dismissed from service forthwith and the workman was asked to show cause why the punishment of dismissal should not be imposed on him. That the workman replied to the show cause notice by letter dated 15-1-86 and the General Manager passed the order dated 16-1-86 i.e. on the very next date, dismissing the workman from service forthwith. That the workman preferred an appeal against the said dismissal order before the Managing Director but the said appeal was

dismissed by order dated 6-6-86. That thereafter the workman raised an industrial dispute demanding reinstatement in service and the conciliation proceedings held by the Asst. Labour Commissioner, ended in failure and the failure report was submitted to the Government on or about 17-7-86. That however, the Government took the decision not to refer the dispute for adjudication, the employer being a Government owned company. That the workman challenged the decision of the Government in the Bombay High Court, Panaji Bench, Panaji, by way of writ petition and the High Court directed the Government to reconsider the matter and thereafter the Government referred the present dispute to this Tribunal for adjudication. The workman contended that the action of the employer in dismissing him from service is illegel and unjustified as the action of the employer is based on an invalid chargesheet, illegal enquiry and for no misconduct committed by him. The workman therefore claimed that he is entitled to reinstatement in service with full back wages and other consequential benefits.

3. The employer filed written statement at Exb.3. The employer admitted that the employees of the employer had organised themselves into an union called "Kadamba Transport Corporation Workers' Union" and that the said union by letter dated 4-11-83 raised charter of demands against the employer on behalf of the employees. The employer stated that it participated in the conciliation proceeding and in the said conciliation proceedings the employer settled with the union almost all the demands and the only demands which could not be settled were pertaining to the financial liabilities. The employer stated that it had sought time before the conciliation officer to put up the matter before the Board of Directors and seek their approval before any settlement could be reached and accordingly the proceedings were adjourned to 13th April, 1994. The employer stated that by this time the Government declared the Road Transport Industry in the Territory as Public Utility Service under the provisions of Industrial Disputes Act, 1947 as per the notification dated 30th March, 1984 which was published in the Government Gazette dated 5th April, 1984. The employer stated that while the conciliation proceedings were pending on the charter of demands the union served on the employer the notice of strike dated 31-3-84 and 1-4-84 stating that the workman would go on strike on 14-4-84 or on any date thereafter and that the said strike was on the issue of the charter of demands which was pending before the conciliation officer. That as per the said notice the workman went on strike w.e.f. 14-4-84 which was in breach of the provisions of the I. D. Act, 1947. The employer stated that besides going on illegal strike the workman indulged in acts of obstructing union workers from reporting to work, obstructing the buses of the employer and many other acts which if proved would amount to acts of misconduct as per the Certified Standing Orders of the Employer. The employer stated that the workman was suspended pending enquiry and final decision in the alleged indulgence in acts of misconducts and the said letter of suspension was followed by a chargesheet dated 8th June, 1984. The employer stated that after the chargesheet was issued an enquiry was conducted by a Senior Officer of the employer and the workman fully particiapted in the said enquiry and was defended by an office bearer of the union. The employer stated that after the enquiry was being completed the Inquiry Officer submitted his report holding the workman guilty of all the 5 acts of misconducts alleged against him. The employer stated that the workman was given a show cause notice dated 4-1-86 asking him to show cause why he should not be awarded punishment of dismissal and on receipt of the reply from the workman and considering his past record the employer terminated the services of the workman by letter dated 16-2-86. The employer stated that the enquiry conducted against the workman is fair and proper and the acts of misconducts levelled against the workman were proved in the enquiry. The employer stated that its action in terminating the services of the workman is legal and justified and the workman is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder which is at Exb.4.

4. On the pleadings of the parties, following issues were framed at Exb.5.

1. Whether Party II Kadamba Corporation proves that the Party I/Workman participated in the illegal strike and indulged in the acts of obstructing willing workers, obstructing buses and other acts as alleged in para. No. 9 of the written statement ?

2. If so, whether Party II further proves that the workman was suspended after issuing him a show cause notice for five acts of alleged misconduct and that a departmental enquiry was held against the workman as alleged ?

3. If so, whether Party II further proves that a fair and proper enquiry was held against Party I and that in the enquiry in which Party I effectively participated, that all the five charges of misconduct were duly and properly proved against party I as alleged ?

4. Whether the standing orders under which the charge sheet was issued were applicable and in force at the time of the alleged incident ?

5. If so, whether the action of Party II, Kadamba Corporation in terminating the services of the Conductor Party I, Jairam Malvankar, is just and legal in the circumstances of the case ?

6. Whether the Workman/Party I proves that the action of the Employer/Party II in dismissing him is discriminative ?

7. If not, what relief is Party I entitled in this reference ?

5. The issue Nos. 2, 3 and 4 were treated as preliminary issues and the said issues were disposed of by Order dated 2-3-93. As per the said order the enquiry was set aside and both the parties were allowed to lead evidence on the merits of the case. Accordingly, the workman as well as the employer led evidence before this Tribunal.

6. My finding on the remaining issues are as follows :

Issue No. 1 : Act of obstructing bus GDX 126 is proved

Issue No. 5 : In the negative.

Issue No. 6 : In the affirmative.

Issue No. 7 : As per para. 20 below.

7. *Issue No. 1*: This issue in fact pertains to whether the charges of misconduct levelled against the workman vide chargesheet dated 8-6-1984 are proved. Adv. Shri P. J. Kamat, the learned Advocate for the employer submitted that as per the chargesheet dated 8-6-84 Exb. E-9 the charges that are made against the workman are that (1) he went on illegal strike from the midnight of 14-4-84, (2) he obstructed the bus GDX 126 on 15-4-84 at 1.00 p. m. which was being driven by Valentine Esteves and which being taken to Panaji for trip to Mangalore (3) he alongwith some other workers assembled at Porvorim depot and obstructed and thereatened the other workers who wanted to report for work on 15-4-84 and (4) he forced the staff to stop buses at Mandovi bridge and other places on 15-4-84 and forced them to take the said buses to depot to paralyse the work. Adv. Shri Kamat in the course of his arguments admitted that the employer has not led any evidence to prove the charges mentioned at serial Nos. 3 and 4 above. With reference to the charge at Sr. No. 1 he submitted that the workman in his reply to the chargesheet, dated 12-6-84 did not state that there was no strike or that it was not illegal, or that he was not on strike nor any suggestions were put that the workers had not gone on strike. He submitted that the employer has proved that the strike was illegal through the evidence of Shri S. V. Naik. As regards the charge at sr. No. 2 that the workman obstructed the bus GDX 126 which was being driven by Shri Valentino Esteves and which was being taken to Panaji for Trip to Mangalore, Adv. Shri Kamat submitted that the workman in his reply to the charge sheet did not deny his presence at the Porvorim depot but he took the plea of alibi in the enquiry and in the proceedings before this Tribunal. He submitted that the workman in his deposition has admitted that on 15-4-84 his duty was to get over at 10.55 p.m. but he further stated that on 15-4-84 he left for home after his duty time was over, after he handed over cash at 10.00 a. m. He submitted that therefore the contention of the workman that he was not present at the time of the incident cannot be believed. Adv. Shri Kamat further submitted that the standard of proof which is required in an enquiry or in a proceeding before the Tribunal is not the same as is required in a Criminal trial. He submitted that in a proceeding before the Tribunal some evidence to prove the charge is enough. In support of his this contention he relied upon the decision of the Supreme Court in the case of Ratan Singh v/s State of Punjab, reported in AIR 1977 SC 1512. He submitted that the charge against the workman that he obstructed the bus GDX 126 is supported by all the three witnesses examined by the employer, and more particularly the witness Shri Esteves has stated that the workman was among the other workers who obstructed the bus.

8. Adv. Shri Nigalye, the learned Advocate for the workman, submitted on the other hand that this Tribunal while deciding the preliminary issues has held that the certified standing orders of the employer were not applicable to the workman when his services were terminated. He submitted that therefore the model standing orders were applicable to the workman, as it is to be seen whether the acts alleged against the workman are misconducts under the model standing orders. As regards the contention of the employer that the workman had gone on illegal strike, he submitted that there is no allegation in the charge sheet that the workman had gone on illegal strike. He submitted that the acts of misconduct alleged against the workman are at para. 2 and 3 of the charge sheet where there is no allegation against the workman that he went on strike which was illegal and therefore he cannot be held guilty for the said misconduct. As regards the charge that the workman obstructed the bus GDX 126 which was being taken to Panaji, from the Porvorim depot, Adv. Shri Nigalye submitted that even if it is presumed that the workman was involved in the incident, the said incident had taken place on the public road and not within the

depot premises, and therefore it would not fall within the clause 14(3)(h) of the schedule I of the Industrial Employment (Standing Orders) Act, and hence would not be a misconduct. In support of his this contention he relied upon the decision of the Supreme Court in the case of M/s Glaxo Laboratories (I) Ltd., v/s Presiding Officer, Labour Court, Meerut and others, reported in 1983 Lab. I. C. 1909 and in the case of Palghat BPL & PDP Thozhilali Union v/s BPL India Ltd., and another reported in 1996 I CLR 368. He submitted that Shri Esteves has produced his report at Exb.W1 and his report does not say that the workman had given threats or that he had stones in his hand. He submitted that the report says that threats were given by Daulatrao Rane and Sultan Khan, and that the workers had blocked the road and were shouting slogans. He submitted that the time of the incident is also not proved because according to the charge sheet the incident took place at 1.00 p. m. whereas Shri Esteves has stated in his deposition that instructions were given to him at 10.00 a. m. to bring the bus from Porvorim depot and that he left for the depot within 10 minutes thereafter which means that he must have reached depot latest by 11.00 a. m. or immediately thereafter and hence the incident could never have taken place at 1.00 p. m. as alleged. He further submitted that the evidence of Shri Prabhu and Shri S. V. Naik cannot be relied upon because they have stated that they were standing towards the backside of the bus which was at a distance of 50 mts. and the workers were at the front of the bus which means that they could not have seen what happened at the front side of the bus. He also submitted that the incident of jumping from the police van is a false and fabricated incident as otherwise police would have filed criminal case against the workman.

In reply to the arguments of Adv. Shri Nigalye, Adv. Shri Kamat, the learned Advocate for the workman submitted that clause 14(h) of the model standing orders which relates to act subversive of discipline does not state that the act should be done within the premises. He submitted that the Supreme Court in the case of Munchandani Electrical and Radio Industrial Ltd., v/s workmen reported in 1975 (30) FLR 169 held that though the incident of assault had taken place in a Train it was an act subversive of discipline. Adv. Kamat submitted that this decision is not overruled by the Supreme Court in the case of Glaxo Laboratories (supra). Adv. Shri Kamat also relied upon the decisions of the Bombay High Court in the case of (1) Murlidhar Radhoji Savanti v/s General Manager, Nather & Platt (I) Ltd., and others reported in 1992 (64) FLR 78; (2) Shri Suresh S. Patil v/s Mahindara & Mahindra Ltd. reported in 1993 II CLR 231 and (3) Khandu Krishna Bhogade v/s Kalyani Steel Ltd., & Others reported in 1995 I CLR 58.

9. The first question that arises is whether the certified standing orders of the employer applies to the workman or the model standing orders. This is relevant because accordingly it is to be seen whether the charges of misconduct are proved. This Tribunal had framed preliminary issues as regards the faimess of the domestic enquiry held against the workman, and whether the standing orders were applicable and in force at the time of the alleged incident. This Tribunal by findings dated 2-3-1993 disposed of the said preliminary issues. It was held by this Tribunal that the certified standing orders of the employer were not applicable to the workman at the time when the alleged incidents took place. On this ground alone the enquiry was set aside and the parties were asked to lead evidence on merits which the parties did. Therefore Adv. Shri Nigalye, the learned Advocate for the workman is right in submitting that what is to be seen is whether the acts alleged against the workman are the misconducts under the model standing orders.

10. The employer has contended that as per the charge sheet dated 8-6-94 four charges are levelled against the workman namely that (1) He went on illegal strike from the midnight of 14-4-84, (2) He obstructed the bus GDX 126 on 15-4-84 at 1.00 p. m. when it was being taken out of the depot by Shri Valentene Esteves, (3) He alongwith other workers assembled at Porvorim depot and obstructed and threatened the other workers who wanted to report for work on 15-4-84, and (4) He forced the staff to stop buses at Mandovi Bridge and other places on 15-4-84 and forced them to take the said buses to depot so as to paralyse the work. As regards the charges at Sr. No. 3 and 4, namely that the workman obstructed and threatened other workers who wanted to report for work on 15-4-84 and that he forced the staff to stop buses on Mandovi Bridge and forced them to take the said buses at the depot, Adv. Shri Kamat, the learned Advocate for the employer has fairly conceded that the said charges are not proved. Besides, I have gone through the evidence led by the employer. In support of the charges the employer has examined three witnesses namely Shri Valentene Esteves, Shri Anil Prabhu and Shri S. V. Naik. All these witnesses have deposed on the incident of obstructing the bus GDX 126 thereby preventing it being taken out of the Porvorim Depot. None of the witnesses have stated that the workman obstructed or threatened the workers who wanted to report for work or that he forced the staff to stop the buses at Mandovi Bridge and at other places and forced them to take the said buses to the depot to paralyse work. Therefore there is no evidence to support the above charges against the workman and Adv. Shri Kamat has rightly conceded this fact. This being the case what remains to be seen is whether the

charges at Sr. No. 1 and 2 namely whether the workman went on illegal strike from the midnight of 14-4-84 and whether he obstructed the bus GDX 126 grom being taken out of the Porvorim depot on 15-4-84 at 1.00 p.m. are proved or not.

11. The charge sheet dated 8-6-84 has been produced at Exb.E-9. It is a settled law that the charges should not be vague but they should be specific. In the present case the charge sheet reads as follows:

1. Further to our letter of suspension dated 25-4-84 please note that you have indulged in following acts in furtherance to the illegal strike commenced on 14th April, 1984.

2. That on 15th April at around 13.00 hrs. you along with other workers obstructed Bus No. GDX 126 driven by Shri V. Esteves, Assistant Traffic Inspector which was being brought out of the Porvorim Depot to ply on the Mangalore route and thereby interfered with the work of other employees in presence of Depot Managers, Police Officials and also the District Collector.

3. You along with other workers who used to unauthorisedly assembled near the Traffic Office at Porvorim Depot, obstructed and threatened several workers who wanted to go on duty. You also restrained some of them forcibly and detained them at the place though they were willing to go on duty on 15th & 16th April and thereafter. Similarly you forced even the willing operating staff who did not want to participate in the strike to stop the buses at Mandovi bridge and also other places on 15th April and forced them under duress and threatened to take the buses to Porvorim Depot instead of proceeding to Panaji Bus Stand where they were supposed to go as schedule, with the intention of paralysing normal working of the Corporation.

The above acts on your part if proved will constitues the following acts of misconduct as per the Certified Standing Orders of the Corporation.

From the charge sheet which is reproduced hereinabove it can be seen that the allegations or the charges are contained at Sr. No. 2 and 3 of the charge sheet, and these allegations do not state that the workman had gone on illegal strike from the midnight of 14-4-84. The charge sheet only states that the workmen indulged in the acts mentioned at Sr. Nos. 2 and 3 of the charge sheet in furtherance of the illegal strike which had commenced on 14th April, 1984. Though it may be a fact that illegal strike had commenced on 14-4-84 it does not mean that the workman had also gone on illegal strike. In the absence of specific allegation or charge that the workman had gone on illegal strike from 14-4-84, the workman cannot be held guilty of the said charge nor the evidence if there is any in that respect can be looked into or considered to hold the workman guilty of the said charge. This being the case the only charge which remain against the workman is that of obstructing the bus GDX 126 on 15-4-84 at 1.00 p. m. when it was being taken out of the Porvorim depot by Mr. Valentine Esteves, and it is to be seen whether this charge is proved and if it is so whether it amounts to misconduct as per the model standing orders.

12. In the present case the employer has examined three witnesses namely Shri Valentene Esteves, Shri Anil Prabhu and Shri Shrikant Naik. The charge against the workman is that on 15-4-84 at about 1 p. m. he alongwith the other workers obstructed the bus GDX 126 driven by Asst. Traffic Inspector Shri Esteves which was being brought out of the Porvorim Depot to ply on the Mangalore route. The employer has examined Shri V. Esteves, Shri Anil Prabhu and Shri S. V. Naik in support of this charge. All these three witnesses have stated that they had gone to the Porvorim depot from Panaji on 15-4-84 in the morning to bring the bus GDX 126 at Panaji bus stand. In the charge sheet it has been stated that the incident of obstructing the bus took place at 13.00 hrs. at the Porvorim depot. Adv. Shri Nigalye the learned Advocate for the workman has submitted that the incident at 13.00 hrs. is not proved because Shri Esteves has stated in his evidence that he was given instructions to bring the bus at 10 a. m. and within 10 minutes they left for Porvorim depot. It is true that there are discripancies in the statements of the witness as far as time of the incident is concerned. However, in my view these discrepancies are minor discrepancies. Merely because there is discrepancy in the time of the incident it cannot be said that the incident had not taken place at all. In the case of Rattan Singh (supra) the Supreme Court has held that the standard of proof in a case before the Tribunal is not the same as in Criminal Tribunal. It is also to be remembered that the incident had taken place in the year 1984 and the evidence of the witnessess is recorded in the year 1995-96, that is nearly 10 years after the incident had taken place. Hence, some discrepancies are bound to be there. All the three witnesses of the employer have stated that the bus GDX 126 was obstructed by the workers at a distance from the Canteen. Shri Esteves has stated that it was obstructed at a distance of 50 mts. from the Canteen whereas Shri S. V. Naik has stated that it was obstructed at a distance of about 15 to 20 mts. from the Canteen. But the fact remains that all the three witnesses have

made a categorical statement that the bus was obstructed by the workers. All the three witnesses have also stated that the workman was among the workers who obstructed the said bus. They have identified the workman among the workers. In the cross examination of the said witnesses, the workman has tried to set up the case of total denial, that is, the incident of obstructing the bus GDX 126 did not take place at all. It was suggested to the witness Shri Esteves that the bus GDX 126 was stopped because another bus was approaching and there was no space for the vehicle to pass. This suggestion was denied by the witness. The workman has examined himself in his defence. In his evidence he has taken a totally different stand. He has taken the defence that at the time when the incident took place he was not at the place of the incident at all. If according to the workman he was not present at the depot when the alleged incident took place how he could suggest to the witness Shri Esteves that the bus was stopped because another bus was approaching and there was no space for the vehicle to pass. This suggestion itself shows that the workman was present at the time when the alleged incident of obstructing the bus is said to have taken place. The workman in his deposition has taken the stand that on 15-4-84 he was sitting in the duty allocation room since the driver had not reported for work and that at that time the Traffic Inspector Shri Ramdas Naik came and told him that he should deposit the cash and go home. He has stated that he deposited the cash at 10 a.m. and went to the Panaji bus stand where he met his neighbour Shri Namdeo Malwankar and that both of them reached Divar village after crossing the ferry and from Divar to Mallar they went by a tempo. He has stated that from Mallar he hired a rickshaw and went to the ferry point at Narva where he met his neighbour Shri Ashok Dabolkar. He has stated that said Dabholkar told him to accompany him at his uncle's house at Vattadev, in Bicholim Taluka because his uncle was sick, which he did and that he returned back to Narva at about 5 p.m. The defence that he was not present at all at the time when the alleged incident took place has been taken by the workman for the first time when he examined himself. No suggestion whatsoever was put to any of the witness of the employer that the workman had left the depot after depositing cash at 10 a.m. as per the instructions from the Traffic Inspector Shri Ramdas Naik and that he was not present at all in the depot when the alleged incident took place. The first opportunity which the workman had to put up his case was when he filed reply to the suspension order. This reply has been produced at Exb. E-8. The workman in his cross examination has admitted that he did not state in the said reply that when he was sitting in the duty allocation room, the Traffic Inspector Mr. Ramdas Naik told him that he should deposit cash and go home or that after depositing cash at 10 a.m. he came to Panaji bus stand and then proceeded to his residence at Narva and reached there at 5 p.m. Besides, the workman has not examined any witness in support of his case that he left the Porvorim depot at 10 a.m. and after coming to Panaji bus stand proceeded to his residential place at Narva. In my view the workman ought to have examined Traffic Inspector Shri Ramdas Naik, Shri Namdeo Malwankar and Shri Ashok Dabholkar as these were the material witness to prove that he was not at the depot when the alleged incident took place. Therefore the workman has failed to prove that he was not present at the depot at the time of the alleged incident. The workman in his cross examination has admitted that his schedule started at 11.10 a. m. on 14-4-84 and it was to get over at 1.55 p. m. on 15-4-84. He has further admitted that cash report is to be given after the schedule is completed. The workman's case is that he had not gone on strike. Therefore the presumption is that he was at the depot till 1.55 p. m. as he has admitted that his schedule was to get over at 1.55 p.m. This presumption had to be rebutted by the workman by leading proper evidence, which he failed to do . Since the workman took the specific defence in his evidence and he failed to prove that defence, there is no reason to disbelieve the witnesses of the employer. The witnesses examined by the employer have corroborated each other on the incident of obstructing the bus GDX 126 by the workers and that the workman was one amongst them. The workman suggested to the witness Shri Esteves in his cross examination that the bus GDX 126 was stopped because another bus was approaching and there was no space for the vehicle to pass. Therefore in view of this suggestion the workman admitted that Shri Esteves had come to the Porvorim Depot to take the bus out of the depot and that he was taking the said bus out of the said depot. Another suggestion which was put to Shri Esteves was that the workers had gathered by the side of the road and that they were demanding that they should be allowed to enter the depot and join their duties. By this suggestion the workman has admitted the presence of the workers at the Porvorim depot.

13. Shri Esteves, the employer's witness in his cross examination has stated that the Porvorim depot is situated at the side of the internal public road, and the said depot is surrounded by a compound wall with a gate for the vehicles to enter the depot. He has further stated that the workers were sitting outside the depot by the side of the public road at a distance of about 50 mts. from the Canteen. He has stated that the workers obstructed the bus on the road by gathering infront of the bus and prevented it from proceeding further. He has further stated that the Collector proceeded towards

bus which was obstructed by workers and was standing by the side of the road and was surrounded by workers with whom he was discussing. He has also stated that the Collector ordered lathi charge. The witness Shri S. V. Naik, has also stated in his deposition that when they reached the Porvorim depot they found that a group of workers were standing near the gate of the depot and were obstructing the bus from being taken out of the depot. He has stated that the General Manager asked Shri Esteves to go inside the depot and bring out the luxury bus GDX 126. He has further stated that Shri Esteves went inside the depot and brought the bus out and when it reached at a distance of about 15 to 20 mts. from the canteen it was stopped by the striking workers and the workman was amongst the workers who obstructed the bus and did not allow it to move forward. He has also stated that the Collector addressed the striking workers when they would not listen, ordered lathi charge. In their cross examination the workman has not been able to extract any thing which would support his case or which would make their evidence disbelievable. In the light of what is discussed above, I am of the view that the employer has succeeded in proving that the workman along with the other workers obstructed the bus GDX 126 which was being brought out of the depot, so as to prevent it from being taken to Panaji bus stand, and the said obstruction was caused ouside the depot on the internal public road. I, therefore answer the issue no. 1 accordingly.

14. Now the question is whether this act on the part of the workman amounts to misconduct. Adv. Shri Nigalye, the learned Advocate for the workman has contended that since the incident has taken place outside the depot premises, it would not fall within clause 14(3) (h) of the Schedule I of the Industrial Employment (Standing Orders) Act and hence would not be a misconduct. In support of his this contention he has relied upon the decision of the Supreme Court in the case of Glaxo Laboratories (I) Ltd. (supra). Adv. Shri P. J. Kamat, the learned Advocate for the workman has on the other hand contended that clause 14 (3)(h) of the Model Standing Orders which relates to act subversive of discipline does not state that the act should be done within the premises. His contention is that it is immaterial where the act is committed. If the act effects the discipline or working of the establishment, it would be a misconduct irrespective of the place where it is committed. In support of his these contentions he has relied upon the decision of the Supreme Court in the cause of Muchandani Electrical and Radio Industries Ltd. (supra) and decision of the Bombay High Court in the case of Murlidhar Radhoji Sawant (supra), Suresh Patil (supra), and Khandu Krishna Bhogade (supra).

15. It has been held by me earlier that on the date when the workman was chargesheeted the Model Standing Orders were applicable to him and not the Certified Standing Orders of the employer. Clause 14(3) of the Model Standing Orders enumerates various acts which constitute "misconduct". Clause 14(3) (h) reads as follows :

> "riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline"

In my view the above provision consists of two parts. One is that the concerned workman must have committed an act of riotous or disorderly behaviour at the establishment during the working hours and the other is that he must have committed any act which is subversive of discipline. These are the two separate and independent acts. In my view the commission of the act at the establishment relates only to riotous or disorderly behaviour and not to the commission of the act subversive of discipline. It is not necessary that the act subversive of discipline must have been committed within the premises or precincts thereof. However, the act must affect the discipline or working of the establishment. I have gone through the decision of the Supreme Court in the case of Glaxo Laboratories Ltd. (supra) relied upon by Adv. Shri Nigalye. In my view in fact this decision of the Supreme Court is not applicable to the present case because as per the clause 14(3) (h) of the Model Standing Orders only the riotous or disorderly behaviour during the working hours which is also an act subversive of discipline must have been committed at the establishment and not any other act which is subversive of discipline. In the present case the workman was not charged for riotous or disorderly behaviour during the working hours, but for obstructing the bus GDX 126 which was being brought out of the depot. In the case of Glaxo Laboratories the interpretation of the clause 14(3) (h) of the Model Standing Orders was not involved but what was involved was the interpretation of certain clauses of the certified standing orders of the company, and in particular clause 10. The question involved was whether the various acts of misconduct mentioned in the clause 10 of the Standing Orders of the Company such as drunkeness, fighting, indecent behaviour, case of abusive language, wrongfully interfering with the work of other employees or conduct endangering the life or safety of any other person, assault or threat of assault if committed within the premises of the establishment or in the vicinity thereof or irrespective of the time or place are per se acts of misconduct and would be punishable notwithstanding where and when they were committed. The Supreme Court held that if a working is involved

in a riot or indulge in fighting somewhere far away from the premises of the establishment, it has no casual connection with his performance of duty in the industrial establishment in which he is employed. The Supreme Court further held that clause 22 of the standing orders of the Company was a penal statute in the sense that it provided that on proof of misconduct penalty could be imposed and therefore if the expression "committed within the premises of the establishment or in the vicinity thereof" is given a wide construction so as to make the clause itself meaningless and redundant, the penal statute would become so vague and would be far beyond the requirement of the situation as to make it a weapon of torture. The Supreme Court held that the said expression are the words of limitation and they must cut down the operation of the clause. The Supreme Court however held that what constitutes establishment or its vicinity would depend upon the facts and circumstances of each case. In the case of Munchandani Electrical and Radio Industries Ltd. (supra) a worker of the company had threatened other co-worker with an assault and thereafter he assaulted co-worker while he was travelling in a Train. The question involved was whether this act amounted to misconduct. The Supreme Court while interpreting the expression "commission of any act subversive of discipline and good behaviour within the premises or precincts of the establishment" held that the words "within the premises or precincts of the establishment" refer not to the place where the act which is subversive of discipline or good behaviour is committed but where the consequences of such an act manifests itself. The Supreme Court further clarified that an act wherever committed, if it has the effect of subverting discipline or good behaviour within the premises or precincts of the establishment will amount to misconduct. This decision was considered by the Supreme Court in the case of Glaxo Laboratories Ltd. (supra) but is was not over ruled. In this respect, I am supported by the decision of the Bombay High Court in the case of Murlidhar Raghoji Sawant (supra). In this case both the decisions of the Supreme Court, that is, in the case of Munchandani Electrical and Radio Industries Ltd. (supra) and Glaxo Laboratories Ltd. (supra) were considered by the Bombay High Court. His Lordship Justice B. N. Shrikrishna held that both were the Judgements of the Branches of the Supreme Court consisting of three Judges, and there is no evidence in the Glaxo Laboratories case that the law laid down in Munchandani's case was departed from or much less, intended to be over ruled. His Lordship Justice Shrikrishna also agreed with the Judgment of another Single Judge, His Lordship Justice Dhanuka in the case of Bhavani Metal Works v/s Pandurang R. Swami & Others reported in 1991 I CLR 147 wherein it is held that the Judgment in Munchandani's case was merely distinguished by the Supreme Court in Glaxo Laboratories case but was not over ruled as both were judgments of co-ordinate Benches of three Judges and there was no intention of any such over ruling and that both the judgments were operative and binding each in its own sphere and the Trial Court had to on the facts of each case decide which judgement was liable to be invoked. The same principles are laid down by the Bombay High Court in the case of Suresh Patil (supra). This is a Division Beach Judgment in appeal against the judgment of the Single Judge. The Hon'ble Division Bench held that the Hon'ble Single Judge was right in applying the ratio of Munchandani's case and not the ratio of Glaxo Laboratories case looking at the language of the standing orders which was before him. In the case of Kalyani Steel Ltd. (supra) refering to the judgments of the Supreme Court in the case of Munchandani (supra) and Glaxo Laboratories (supra) the Bombay High Court held that there is no conflict between the judgments of the Supreme Court. The High court held that a proper reading of Glaxo Laboratories case would show that the rule in the case of Munchandani's case been emphatically reiterated, and the law laid down in the case of Munchandani is clear. The High Court held that an act "subversive of discipline within the precincts of the industrial establishment" as long as the act has a rational and reasonable nexus with the industrial employment and has the deterious consequence of subverting the discipline in the establishment, regardless of whether the act takes place within or outside the establishment. The High Court held that the emphasis is on the baleful consequences of the act and not on its situs.

16. From the above Judgments of the Supreme Court and the Bombay High Court it therefore follows that an act would be misconduct even if it is committed outside the establishment if the said act has the effect of subverting discipline or good behaviour within the premises or precincts of the establishment and what constitutes establishment or precinct thereof would depend upon facts and circumstances in each case. The act committed should have rational and reasonable nexus with the industrial employment and the deterious consequences of subverting the discipline in establishment or precinct thereof irrespective of the place where it is committed. In the present case the act of obstructing the bus GDX 126 was committed by the workman outside the depot premises, that is on the road outside the depot premises. It is an admitted fact that the employer is a public limited company and is engaged in the business of passenger Transport through stage carriages and for this purpose employs workman in various categories such as drivers, conductors, clerks, Traffic Inspectors etc. The bus GDX 126 was being taken

out of the Porvorim depot for the purpose of running the business of the employer. The workman was employed with the employer as a Conductor. Therefore, though the act of obstructing the bus and thereby preventing it being taken to the destination had taken place outside the establishment, it had the direct nexus with the industrial establishment and the deterious consequence of subverting the discipline in the establishment. The said act had the effect of affecting the discipline or the working/business of the establishment. Therefore even if it is presumed for a moment that the clause 14(3) (h) of the Model Standing Orders provides that the act subversive of discipline ought to be committed within the establishment, still the act committed by the workman is an act subversive of discipline in view of what is discussed above and hence is an act of misconduct. I would like to emphasise again that in my view, in terms of the clause 14(3) (h) of the Model Standing Orders, it is not necessary that the act subversive of discipline ought to be committed at the establishment or precinct thereof but it could be committed at any place even ouside the establishment. I, therefore, hold that the employer has succeeded in proving the charge against the workman that on 15-4-84 at about 1 p. m. he alongwith the others obstructed the bus GDX 126 driven by the Asst. Traffic Inspector Shri Esteves which was being brought out of the Porvorim Depot to ply on the Mangalore route. I, further hold that the above act on the part of the workman is misconduct under clause 14(3) (h) of the Model Standing Orders.

17. *Issue No. 5 and 6:* Both these issues are taken up together as, if it is proved by the workman that there is discrimination in terminating his service, the action of the employer would not be justified. Also it is a settled law that under Sec. 11 A of the Industrial Disputes Act, 1947 the Tribunal has the powers to interfere with the punishment awarded to a workman and award lesser punishment instead. However, this power is to be exercised judiciously and not arbitrarily. Infact it is the duty of the Tribunal to find out whether the punishment awarded to the workman is disproportionate to the misconduct proved against him. In the present case the workman has alleged that the action of the employer in terminating his service is illegal and unjustified. In the view of the matter it is to be seen whether the workman deserves punishment of dismissal from service or lesser punishment.

18. Adv. Shri Nigalye, the learned Advocate for the workman, has contented that the action of the employer in terminating the services of the workman is discriminatory. His contention is that the other employees who were charge sheeted alongwith the workman in respect of the same incidents and for indentical misconducts, were exonerated by the employer and the charge sheets/suspension orders issued against them were withdrawn. The burden was on the workman to prove that there is discrimination. The workman has examined himself in his defence. In his deposition he stated that alongwith him about 300 workers were suspended by the employer and out of these 300 workers 75 workers were charged sheeted and inquiry was initiated against them. He stated that the employer dropped enquiry in respect of some of the workers and reinstated them in service. He stated that the workers who were reinstated were Shri Mohan Manlingkar, R. D. Gauns, Parshuram Karbe, Deepu Shet, Anant Maulinkar, Sultan Khan, Khushali Navelkar, Balkrishna Gadgil, Deelip Naik, Tulshidas Gaonkar, Prakash Agarwadekar, Devidas Velingkar, Ghanu Phadte, Arun Raut, Sagar Achrekar, Ramesh Madgaokar, Vinayak Naik, Anantrao Rane, Chadrakant Kamat, Gajanan Malik, Govind Majit and others. The above statements were not denied in the cross examination of the workman. In fact the workman has not been cross examined at all in this respect. Therefore the above statements of the workman are deemed to have been admitted by the employer. Besides, the employer's witnesses have also lend support to this contention of the workman. Shri Esteves in his evidence has stated that among the workers who stopped the bus he could identify the workman, Jairam Malwankar, Ramnath Mardolkar, Ramesh Madgaonkar, Suresh Parvatkar, Jude Araujo, Sultan Khan, Daulatrao Rane and some others. In his cross examination he has stated that in the year, 1984 Shri Daulatrao Rane and Sultan Khan were workig at Porvorim Depot and that Shri Sultan Khan is presently working at Panaji Depot whereas Shri Daulatrao Rane has left the services. He has further stated that he knows Ramesh Madgaonkar, Mohan Maulingkar, Anand Maulingker and Vinayak Naik who were working in the year, 1984 and that they continue to work till today. The witness Shri Anil Prabhu has stated that among the workers who stopped the bus he could identify the workman Shri Jairam Malvankar, Dina Naik, Jude Araujo, Suresh Parvatkar, Ramesh Madgaonkar, Sultan Khan, Dipu Shet and others. In his cross examination he has stated that Mohan Maulingkar, Anant Maulingkar and Parshuram Karbe were also present in the group of workers who obstructed the bus. He has admitted that Vinayak Naik, R. D. Gauns and Parshuram Karbe were promoted as Asst. Traffic Controller after April, 1984. The witness Shri Shrikant Naik has stated that among the workers who obstructed the bus he could identify the workmen Jairam Malwankar, Suresh Parvatkar, Sultan Khan, Dina Naik, Ramesh Madgaonkar, Vithu Shirgaonkar, Jude Araujo and some others. He has stated

that among the workers who were arrested were Dina Naik, Vithu Shirgaonkar, Ramesh Shirgaonkar, Suresh Parvatkar and workman Jairam Malwankar. From the above evidence of the employer itself it is evident that though many workers had obstructed the bus GDX 126, only, few were suspended and charge sheeted and were subsequently punished. The evidence from employer itself shows that though the workers Daulatrao Rane, Sultan Khan, Ramesh Madgaonkar, Mohan Maulingkar, Anant Maulingkar, Vinayak Naik, Parshuram Karbe had participated in the act of obstructing the bus GDX 126 and it was alleged that they had participated in the illegal strike, still no action was taken against them and they continued to remain in service. There is no evidence to show that they were suspended and charge sheeted. The employer's evidence discussed above shows that the workers Vinayak Naik, Parshuram Karbe, R. D. Gauns were infact promoted as Asst. Traffic controller after April, 1984 though they had taken the part in obstructing the bus GDX 126 and it was alleged that they had gone on illegal strike. The said workers, according to the employer, had committed the same kinds of act of misconduct with which the workman was charged. However, the employer applied different sets of rule to the workers. The employer took action and punished some workers including the workman Jairam Malwankar but did not take any action against the others whose names are mentioned above. On the contrary there is an admission on the part of the employer that some were even promoted. This act on the part of the employer is discriminatory. The employer has not given any explanation to justify this discriminatory act on its part. I, therefore, hold that the workman has succeeded in proving that the action of the employer in dismissing him from service is discriminative. Hence, I answer the issue No. 6 in the affirmative.

19. Now it is to be seen whether the action of the employer in terminating the services of the workman is legal and justified. Adv. Shri Nigalye, the learned Advocate for the workman has submitted that the punishment of dismissal awarded to the workman is too severe. He submitted that the past record of the workman was good and no contrary evidence has been brought on record by the employer. Adv. Shri Kamat, the learned Advocate for the employer has submitted on the other hand that dismissal of the workman from service is justified because the act which has been committed by the workman is a serious offence and it has the effect of affecting the discipline in the establishment. With the introduction of Sec. 11A to the Industrial Disputes Act, 1947, the Tribunals are now clothed with the powers to interfere with the punishment awarded by the employer, and award lesser punishment instead. The Tribunal has to see that the punishment awarded to the workman is not disproportionate to the misconduct proved against him. The act which has been proved against the workman is a solitary act of misconduct. There is no evidence that the workman was earlier involved in the similar act of misconduct or any other misconduct. In the case of Association of Chemical Works (1993 I CLR 426) held that the act on the part of the company in discharging the employees from service for the solitary act of disobedience was not legal and justified. It is also to be seen the circumstances under which the act of obstructing the bus was committed by the workman. It is the case of the employer itself that the workers had gone on illegal strike from the midnight of 14-4-84. As mentioned by me earlier, there is no specific charge against the workman that he had also gone on illegal strike alongwith the other workers. It is possible that the workman took part in obstructing the bus on the spur of the moment. In the case of Palghat BPL & PSP Thozilali Union v/s BPL India Ltd., & anr. reported in 1996 I CLR 368, relied upon by Adv. Shri Nigalye, the learned Advocate for the workman, the company dismissed three workers for assaulting the company's officer outside the company's premises but the Labour Court modified the order of punishment and directed reinstatement with 25% of the back wages. The High Court set aside the Award of the Labour Court and restored the order of dismissal. The Supreme Court however set aside the order of the High Court holding that the award of the Labour Court is proper and justified in the facts and circumstances. The Supreme Court held that the three workers alone were not the members of the assembly of the workman at the BPL bus stop where the assault took place and the workman were agitating by their collective bargaining for acceptance of their demands and attacked the officers when they were going to the factory. The Supreme Court held that under the circumstances the Labour Court was justified in taking the lenient view and setting aside the dismissal order. The same principles can be applied to the present case also as the facts are some what similar. It is the case of the employer itself that the workers had gone on illegal strike in pursuance to the call given by the Union with reference to the charter of demands served on the employer and in respect of which conciliation proceedings were pending. The workers were agitating for acceptance of their demands. The workman Shri Jairam Malwankar was not the only workman who had obstructed the bus from being taken out of the Porvorim depot. In the circumstances dismissal of the workman will not be justified. Besides, the evidence on record does not show that the past conduct of the workman was not good so as to justify the order of dismissal. The only evidence which has been produced by the employer

on the past conduct of the workman is the warning letter dated 15-9-83 Exb.11 issued to him. The workman has admitted the receipt of the said letter. As per the said warning letter the workman had refused to perform his normal work on 9-8-83. However, this warning letter further states that the workman would not be paid wages for that day and that the same would be adjusted from his salary of September, 1983. This means that the workman was already punished for refusing to work on 9-8-83. Except for this letter there is no other evidence on record to show that the past conduct of the workman was not good. Therefore, considering all the aspects of the case and in the light of what is discussed above, I am of the view that the punishment of termination of service awarded to the workman is disproportionate to the misconduct alleged against him and is too severe. The employer ought to have awarded lesser punishment than termination of service. I do not find any justification for awarding the extreme penalty of terminating the services of the workman. Besides, while discussing the issue No. 6, I have also held that the action of the employer in dismissing the workman from service is discriminatory. I therefore, hold that the action of the employer in terminating the services of the workman is not legal and justified. Hence, I answer the issue No. 5 in the negative.

20. *Issue No. 7:* This issue pertains to the relief to be granted to the workman. It has been held by me that the order of termination of service of the workman by the employer is not legal and justified. In the case of H.M.T. Ltd. v/s Labour Court, Ernakulam & Ors. reported in 1994 II CLR 22. The Tribunal had awarded reinstatement with full back wages to the workman, and this award was upheld by the High Court. The Supreme Court however modified the award and granted 60% of the wages to the workman mainly on the ground that 14 years had passed since the date since the date of termination of service and that it is now accepted that no party should suffer on account of delay in the decision. In another case, that is, in the case of Palghat BPL & PSP Thozilali Union (supra) the three workmen who were dismissed from service were found to have committed misconduct for assaulting the company's officer outside the premises. The Labour Court modified the order of dismissal and awarded reinstatement with 25% of the back wages. The Supreme Court held that the Labour Court was justified in taking lenient view and awarding reinstatement with 25% of the back wages because the workman were agitating by their collective bargaining for acceptance of their demands and they appear to have attacked the officers when they were going to the factory. The Supreme Court held that the said three workmen alone were not the members of the assembly of the workmen standing at the BPL bus stop who pelted stones and attacked the officers of the company when they were going to the factory and caused grievious injuries to them. In the present case also the bus was obstructed in support of the agitation resorted to by the workers to support their demands. It is the case of the employer itself that the workers had gone on illegal strike. The workman Jairam Malwankar was one among the 300 workers who obstructed the bus. More than 13 years have passed since the date of termination of the services of the workman as the termination had taken place on 16-2-86. The dispute was referred to this Tribunal in January, 1988 and the same is pending for the last about 11 years. It has come on record through the evidence of the workman that he was gainfully employed with River Navigation Department for a period of three months from 17-7-87 on wages of Rs. 32/- per day. This period of gainful employment is for a very short period and is negligible. Considering the misconduct involved in the present case, the circumstances under which it was committed, and also considering all the aspects of the case discussed by me earlier including the past conduct and gainful employment and further applying the principles laid down by the Supreme Court in the above referred cases, I am of the view that it would be just and proper to reinstate the workman in service with 30% of the back wages from the date of termination of his service till the date of the Award.

In the circumstance, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Kadamba Transport Corporation Ltd., Panaji, in terminating the services of the workman Shri Jairam Malwankar, Conductor, with effect from 16-2-1986 is not legal and justified. The workman Shri Jairam Malwankar is ordered to be reinstated in service with 30% of the back wages from the date of termination of his service till the date of the Award and he shall be entitled to full wages and other benefits from the date of the Award.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

CL/Pub-Awards/98/3072

The following Award dated 12-4-1999 in Reference No. IT/4/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolkar, Ex-Officio Joint Secretary (Labour).

Panaji, 21st June, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/4/92

Workmen,
Rep. by Gomantak Mazdoor Sangh,
Ponda-Goa. — Workmen/Party I

V/s

M/s. Fabril Gasosa,
Rep. by
1. Mrs. Maureen P. F. de Sequeira,
2. Mr. Jack Savio Anil de Sequeira,
3. Miss Julia Maria Aisha de Sequeira,
4. Miss Lilia Ann Amita de Sequeira
Residents of Campal,
Panaji Goa. — Employer/Party II

Workmen represented by Adv. P. B. Devari.
Employer represented by Mrs. Amita de Sequeira

Dated: 12-4-1999.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 24-12-1991 bearing no. 28/44/91-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Fabril Gasosa, Borim, Ponda, in laying off their following 12 workmen, is legal and justified?

(1) Roque Pereira.
(2) Sonu Roghu Naik, Helper.
(3) Laxman Gominath Naik, Helper.
(4) Shrikant Shankar Gaude, Helper.
(5) Anand Rama Gaude, Helper.
(6) Premand M. Naik, Helper.
(7) Rohidas K. Naik, Helper.
(8) Bombi K. Naik, Helper.
(9) Rohidas B. Naik, Helper.
(10) Apa M. Naik, Helper.
(11) Vithu C. Gaude, Helper.
(12) Shriveantappa Rayappa, Kengeri Sr. Operator.

If not, to what relief the workmen are entitled ?"

2. On receipt of the reference, a case was registered under No. IT/4/92 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workmen/Party I (for short, "Union") filed statement of claim which is at Exb.3. The facts of the case in brief as pleaded by the union are that vide letter dated 1-7-91 the union informed the Labour Commissioner as regards illegal lay off of 36 workmen of M/s. Sequeira Enterprises, consisting of Fabril Gasosa and Agencia E. Sequeira Units situated at Borim, Ponda, Goa, w.e.f. 1-7-91. That out of the said 36 workmen 12 workmen whose names are mentioned in the reference belonged to the Employer/Party II (for short "employer"). That the lay off was effected by the employer to victimise the workmen for having joined the union who has filed claim application u/s 33C(1) of the Industrial Disputes Act, 1947 against the employer for the recovery of money arising out of non payment of VDA in terms of the settlement dated 9-12-86. That the employer has effected the lay off without permission as required under Chapter VB of the Industrial Disputes Act, 1947. That the reasons given for lay off is not the true reasons and the paucity of work was artificially created only to victimise the workmen. The union contended that lay off effected by the employer is illegal and unjustified.

3. The employer filed written statement which is at Exb.4, by way of preliminary objection the employer stated that the issue of lay off cannot be a subject matter of industrial dispute and hence reference is null and void. The employer stated the workmen who had been laid off were subsequently retrenched and hence the issue of lay off does not survive. The employer stated that the union did not raise any demand on the employer and as such there is no industrial dispute and hence the reference is null and void. The employer stated that the lay off was effected because of the paucity of work and the workmen were rendered surplus. The employer stated that the management having borne heavy liability

on account of surplussage finally decided that the only option available to them is to retrench the surplus workmen and therefore the workmen who were laid off were subsequently retrenched. The employer stated that the lay off effected by them is legal and justified. The employer denied that the lay off was effected to victimise the workmen. The employer stated that the lay off was effected legally and was in accordance with the law. The employer denied that the workmen are entitled to any relief as claimed. The union thereafter filed rejoinder.

4. On the pleadings of the parties, issues were framed at Exb.6 and thereafter the case was fixed for the evidence of the union. After the evidence of the union was closed the case was fixed for the evidence of the employer. On 29-1-98 the parties appeared and filed an application dated 29-1-98 at Exb.14 stating that the main dispute of non payment of VDA and the damands were ultimately settled by a settlement dated 12-12-97 between the employer and the union and that the other dispute with regard to retrenchment and dismissal of few workmen were also settled to the satisfaction of workmen and the union. In the said application it was stated that on account of settlement of all disputes to the satisfaction of the workmen and the union, the union has decided not to press for the demands in the lay off dispute pending for adjudication in the present reference. The union and the employer therefore pray that no dispute award be passed in the present reference.

5. Since according to the union and the employer all the disputes have been settled and in consequence of the settlement of the dispute the union does not wish to press for the demand in the present reference the dispute does not exist and consequently the reference does not survive.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference does not survive since the dispute does not exist.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

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